

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KORY NIELSEN,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.


Case No. C07-5192FDB

ORDER GRANTING MOTION FOR  
CERTIFICATE OF APPEALABILITY  
AND MOTION TO PROCEED *IN*  
*FORMA PAUPERIS*

Petitioner moves for a certificate of appealability on the Court's order adopting the Report and Recommendation, which addressed the issue of retroactivity of *Blakely* in cases like Petitioner's and which also addressed the issue of whether the prior holding in *Apprendi* dictated the holding in *Blakely*. The issues do not compel the conclusion that no reasonable jurist could conclude otherwise; therefore, the motion will be granted. Also, based on Petitioner's motion and Affidavit, Petitioner's motion to proceed *in forma pauperis* on appeal will be granted.

ACCORDINGLY, IT IS ORDERED: Petitioner's Motion for Certificate of Appealability [Dkt. # 22] and Petitioner's Motion To Proceed *In Forma Pauperis* on Appeal [Dkt. # 23] are GRANTED.

DATED this 19<sup>th</sup> day of October, 2007.

  
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE